Shangri-La Hotel (KL) Sdn Bhd v Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia & Anor

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO R1–25–102 OF 2007
LAU BEE LAN J
22 DECEMBER 2008

Administrative Law — Judicial review — Application for — Whether Industrial Court chairman correctly identified issues in dispute — Whether applied correct principles of law — Whether chairman considered reference by Minister of Human Resource

The applicant and the first respondent had entered into a collective agreement for a specific term. Upon expiry of the term, both the applicant and the first respondent negotiated for a new collective agreement. However, as both parties reached a deadlock in their negotiation, the applicant referred the matter to the Director General of Industrial Relations ('DGIR') seeking a conciliatory meeting between the parties with regard to a trade dispute in accordance to s 18 of the Industrial Relations Act 1967 ('the IRA'). Subsequently, the Minister of Human Resources ('Minister') upon considering the DGIR's report on the continuing dispute between the applicant and the first respondent referred the matter to the Industrial Court. The first respondent filed its statement of case together with a proposed new collective agreement that included other matters apart from the issues of minimum salary and the annual increments. The applicant argued in the statement of reply that the statement of case ought to be confined to the issues of the trade dispute namely the issues of minimum salary and annual increments. The applicant subsequently filed a common list of disputed articles on the direction of the Industrial Court. The applicant argued that the first respondent's proposed new collective agreement encompassed other matters, which were never the subject matter of the dispute between the parties and raised an issue of the jurisdiction of the Industrial Court to deal with the whole of the collective agreement. The learned Chairman of the Industrial Court in dismissing the applicant's application stated, inter alia, that there was nothing in the reference by the Minister, that the trade dispute referred for adjudication by the Industrial Court was limited to the two issues in dispute as argued by the applicant. Hence, the applicant's submission for judicial review in accordance to O 53 r 3(2) Rules of the High Court 1980 seeking, inter alia: (1) a prohibition order against the Industrial Court from

proceeding with the hearing of the reference made under s 26(2) of the IRA save and except in so far as such proceedings are limited to the trade dispute as referred to the Minister of Human Resources; (2) an order of certiorari to quash the award.

Held, dismissing the application with costs:

(1) The preliminary question regarding the Industrial Court's jurisdiction had correctly been identified by the chairman in that the issue was whether the jurisdiction of the Industrial Court was limited to the two issues in dispute referred by the applicant to the DGIR or whether it encompassed other issues raised by the first respondent (see para 3.1).

(2) The Minister accordingly and pursuant to s 26(2) of the IRA had referred the trade dispute between the applicant and the first respondent to the Industrial Court. The learned chairman had applied the correct principles of law as to the jurisdiction of the Industrial Court was limited and restricted only to issues referred to it by the Minister by an order of reference. The learned chairman also noted of the ongoing negotiations between the applicant and the first respondent, and the fact that the DGIR had knowledge of the trade dispute between the parties (see paras 3.2 & 3.3).

(3) The learned chairman had considered that the Minister's reference stated that the reference was made after he had considered the report of the DGIR in accordance to s 26(2) of the IRA (see para 3.4).

[Bahasa Malaysia summary

Pemohon dan responden pertama menandatangani perjanjian kolektif untuk suatu tempoh tertentu. Apabila tamat tempoh tersebut, kedua-dua pemohon dan responden pertama berbincang untuk perjanjian kolektif yang baru. Walau bagaimanapun, tatkala kedua-dua pihak buntu dalam perbincangan mereka, pemohon merujuk perkara itu kepada Ketua Pengarah Perhubungan Pengurusan ('KPPP') meminta perjumpaan pendamai antara pihak-pihak berkaitan dengan pertikaian perdagangan di bawah s 18 Akta Perhubungan Pengurusan 1967 ('Akta'). Seterusnya, Menteri Sumber Manusia('Menteri'), setelah mempertimbangkan laporan KPPP berkenaan pertikaian berterusan antara pemohon dan responden pertama merujuk perkara tersebut ke Mahkamah Perusahaan. Responden pertama memfailkan penyataan kesnya bersama dengan cadangan perjanjian kolektif baru yang merangkumi perkara-perkara lain selain daripada isu-isu gaji minimum dan kenaikan gaji tahunan. Pemohon berhujah bahawa dalam penyataan balasannya bahawa penyataan kes seharusnya tertumpu kepada isu-isu percanggahan perdagangan iaitu isu gaji minimum dan kenaikan gaji tahunan. Pemohon

kemudiannya memfailkan senarai sepunya perkara-perkara yang menjadi pertelingkahan atas arahan Mahkamah Perusahaan. Pemohon berhujah bahawa cadangan perjanjian kolektif baru responden pertama merangkumi hal-hal lain, yang mana bukanlah hal perkara yang menjadi pertikaian antara pihak-pihak dan membangkitkan isu bidang kuasa Mahkamah Perusahaan untuk menangani keseluruhan perjanjian kolektif tersebut. Dalam menolak permohonan pemohon, pengerusi bijaksana Mahkamah Perusahaan menyatakan, antara lain, tiada dalam rujukan Menteri bahawa pertikaian perdagangan yang dirujuk untuk kehakiman oleh Mahkamah Perusahaan dihadkan kepada dua isu yang dipertikaikan seperti yang dihujahkan oleh pemohon. Maka, permohonan pemohon untuk suatu semakan kehakiman berikutan A 53 k 3(2) Kaedah-Kaedah Mahkamah Tinggi 1980 memohon, antara lain: (1) perintah larangan menghalang Mahkamah Perusahaan meneruskan perbicaraan di bawah s 26(2) Akta kecuali prosiding itu terhad kepada pertikaian perdagangan seperti yang dirujuk kepada Menteri Sumber Manusia; dan (2) perintah certiorari untuk membatalkan award tersebut.

Diputuskan, menolak permohonan dengan kos:

(1) Persoalan permulaan berkenaan bidang kuasa Mahkamah Perusahaan telah dikenal pasti dengan betul oleh pengerusi bahawa isunya ialah sama ada bidang kuasa Mahkamah Perusahaan terhad kepada dua isu bertikai yang dirujuk oleh pemohon kepada KPPP atau sama ada meliputi isu-isu lain yang dibangkitkan oleh responden pertama (lihat perenggan 3.1).

(2) Menteri Sumber Manusia, dengan sewajarnya dan menurut s 26(2) Akta telah merujuk pertikaian perdagangan antara pemohon dan responden pertama tersebut kepada Mahkamah Perusahaan. Pengerusi yang bijaksana telah mengguna pakai prinsip-prinsip perundangan yang betul kerana bidang kuasa Mahkamah Perusahaan terhad kepada dua isu yang dirujuk oleh Menteri Sumber Manusia atas perintah rujukan. Pengerusi yang bijaksana juga maklum tentang perbincangan yang masih berlangsung antara pemohon dan responden pertama, dan juga KPPP sedar tentang pertikaian perdagangan antara pihak-pihak (lihat perenggan 3.2 & 3.3).

(3) Pengerusi yang bijaksana telah mempertimbangkan rujukan Menteri Sumber Manusia dan menyatakan bahawa rujukan tersebut dibuat setelah dia meneliti laporan KPPP berikutan s 26(2) Akta (lihat perenggan 3.4).]

Notes

For cases on application for judicial review, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 191–197.

Cases referred to

All Malayan Estates Staff Union v Golden Hope Plantation Bhd & Anor [1994] 2 MLJ 699, HC (folld)

Krishnadas a/l Achutan Nair & Ors v Maniyam a/l Samykano [1997] 1 MLJ 94; [1997] 1 CLJ 636, FC (not folld)

Kumpulan Jerai Sdn Bhd, Rengam v National Union of Plantation Workers & Anor [1996] 3 MLJ 221, HC (folld)

Majlis Perbandaran Pulau Pinang v Lembaga Rayuan Negeri Pulau Pinang & Anor [2002] 4 MLJ 49; [2003] 5 CLJ, HC (not folld)

Tan Kim Chuan & Anor v Chandu Nair [1991] 2 MLJ 42; [1991] 1 CLJ 441, SC (not folld)

Legislation referred to

Industrial Relations Act 1967 ss 18, 26(2)

Rules of the High Court 1980 O 53 r 3(2)

Dominic Puthucheary (Cheng Mai with him) (Puthucheary Firoz & Mai) for the applicant.

Ambiga Sreenevasan (Shireen Selvaratnam with her) (Sreenevasan) for the first respondent.

Lau Bee Lan J:

[1] The court has considered the applicant's submission and submission in reply of learned counsel for the applicant (encls 14 and 15 respectively), and the first respondent's submission (encl 17). The court is of the opinion that the Industrial Court has not committed jurisdictional errors as contended on behalf of the applicant when coming to its decision as per the Industrial Court Award No 780 of 2007 dated 9 April 2007 and I hereby dismiss with costs the applicant's application (encl 1) for judicial review for, inter alia, the following reliefs as per prayers:

(a) A prohibition order against the Industrial Court (the second respondent) from proceeding with the hearing of the reference made under s 26(2) of the Industrial Relations Act 1967 ('the IRA') save and except in so far as such proceedings are limited to the trade dispute which was referred to the Minister being:

(i) the issue of increase of the starting salary of the lowest grade; and

(ii) the issue of improvement in the annual increments in the salary ranges.

(b) An order of certiorari to quash the Award No 780 of 2007 dated 9 April 2007 made by the Industrial Court.

[2] Before stating the reasons I wish to refer to the background facts leading to this judicial review application. The applicant and the first respondent entered into a collective agreement dated 26 September 2003 for the period of 1 January 2003 to 31 December 2005 (existing CA). Sometime in 2006, both the applicant and the first respondent commenced negotiations for a new collective agreement, ie the sixth collective agreement. A deadlock subsequently occurred during the course of negotiations for the sixth collective agreement between the applicant and the first respondent (exh A1). Pursuant to the deadlock reached, the applicant wrote to the Director General of Industrial Relations ('DGIR') vide a letter dated 27 July 2006 seeking a conciliatory meeting between parties with regard to a trade dispute under s 18 of the IRA (exh A2). Vide a letter dated 14 August 2006, the DGIR from the Kuala Lumpur branch of the Industrial Relations Department requested both the applicant and the first respondent to attend a conciliatory meeting on 16 August 2006 (exh A3). Subsequently, the DGIR vide a letter dated 23 August 2006 requested both the applicant and the first respondent to attend a conciliatory meeting at its office on 25 August 2006. The conciliatory meeting on 25 August 2006 was the first meeting held between parties in an attempt to resolve the trade dispute (exh A4). Upon the failure of both parties to conclude a collective agreement and after considering the DGIR's report on the dispute between the applicant and the first respondent, the Minister of Human Resources vide a decision dated 22 August 2006 under s 26(2) of the IRA referred the matter to the Industrial Court (exh A5). Pursuant to the Minister's reference of the trade dispute to the Industrial Court, the first respondent filed its statement of case dated 20 October 2006 enclosing the proposed new collective agreement. The first respondent's proposed new collective agreement included other matters apart from the issues of minimum salary and the annual increments (exh A7). The applicant thereafter filed its statement in reply stating that the statement of case ought to be confined to the issues of the trade dispute namely the issues of minimum salary and annual increments (exh A8). Pursuant to directions by the Industrial Court, the applicant filed a common list of disputed articles (exh A9). As the applicant was of the view that the first respondent's proposed new collective agreement encompassed other matters which were never the subject matter of dispute between parties, an objection was raised before the Industrial Court on 28 March 2007 by the applicant in respect of the jurisdiction of the said court to deal with the whole of the collective agreement. The Industrial Court had, on the same day, dismissed the applicant's objection and issued an Award No 780 of 2007 dated 9 April 2007. The applicant now seeks to quash the said award by the Industrial Court. The reasons relied on by the applicant for quashing the said award are set out in para 20 of the applicant's affidavit No 1 and the applicant's statement pursuant to O 53 r 3(2) Rules of the High Court 1980 ('the RHC') dated 8 May 2007 (exh A10).

[3] The reasons for my decision are:

(3.1) The gist of the applicant's contention which relates to the preliminary question regarding the Industrial Court's jurisdiction has been correctly identified by the learned chairman in that the issue is whether the jurisdiction of the Industrial Court is limited to the two issues in dispute which were referred by the hotel, the applicant, to the DGIR vide their letter dated 27 July 2006 (exh A1) or whether it encompasses the 18 issues which has been raised by the union (first respondent).

(3.2) It is not in dispute that the Minister's reference is made under s 26(2) of the IRA vide reference dated 22 August 2006. The learned chairman correctly applied the correct principles of law in that the jurisdiction of *the Industrial Court* is limited and restricted only to issues referred to it by the appropriate government by an order of reference, a principle quoted by Wan Adnan J (as he then was) from *The Law of Industrial Disputes* by OP Malhotra at p 19, at p 706 D–H in *All Malayan Estates Staff Union v Golden Hope Plantation Bhd & Anor* [1994] 2 MLJ 699 and followed by His Lordship Low Hop Bing J (now JCA) in *Kumpulan Jerai Sdn Bhd, Rengam v National Union of Plantation Workers & Anor* [1996] 3 MLJ 221 at pp 231 and 232. I agree with the views of both the learned judges on this point. I find that the learned chairman has considered the Minister's reference and came to a correct finding in that the Industrial Court is in agreement with what is referred to the Industrial Court for adjudication is the dispute between the parties pertaining to the sixth collective agreement for the period 1 January 2006 to 31 December 2008 and the Industrial Court is unable to agree with the hotel's suggestion that the court is limited to the issues in dispute ie of minimal salary and annual increment as p 9 of the award (exh A-10), inter alia, stated 'The reference by the Minister pertains to the trade dispute involving the sixth collective agreement between the parties. There is nothing in the reference which states that the trade dispute referred for adjudication by the Industrial Court is limited to the two issues in dispute as submitted by the hotel. Without clear words in the Ministerial reference limiting its scope of jurisdiction, the Industrial Court cannot import such a limitation of its jurisdiction'.

(3.3) The Industrial Court also noted the ongoing negotiations between the applicant and the first respondent and correctly noted that the applicant reported the existence of a trade dispute to the DGIR vide the letter dated 27 July 2006 (exh A2) and the first respondent's letter dated 26 July 2006 (exh A1) and stated at p 8 of the award 'Although it is true that their letter makes mention of the 'two issues highlighted by the Union', however it is noted that the Union's letter dated 26 July 2006 was also forwarded to the Director General as an attachment. The court notes that the Union's letter, read in its entirety, would show that apart

from the two issues in dispute, there were also other issues and proposals which were yet to be resolved between the parties'.

(3.4) The Industrial Court also considered that the Minister's reference states that the reference was made after he had considered the report of the DGIR under s 26(2) of the Act and at p 9 of the award stated 'There is no evidence before us (the Industrial Court) that the said report of the Director General to the Minister was limited to the issues in dispute'.

(3.5) At para 29 of the first respondent's submission the first respondent contends that the applicant has 'admitted that there are indeed other issues involved in the trade dispute which was referred to the Industrial Court by the Minister of Human Resources when it prepared and filed the common list of disputed articles pursuant to the Industrial Court's direction, which included issues in addition to the minimal salary and annual increment'. I find this argument is a non-starter as the stand of the applicant is to the contrary in that in the statement in reply (exh A8), it is their pleaded case that the reference of the trade dispute was only in relation to the two disputed issues of minimal salary and annual increment; their stance is evident by the preliminary objection raised by them at the commencement of the hearing itself; and it is an irrelevant argument as a matter of law no amount of 'admission' by any party would confer jurisdiction on the Industrial Court as it derives its jurisdiction from statute.

[4] Learned counsel for the applicant's referred to the cases of *Majlis Perbandaran Pulau Pinang v Lembaga Rayuan Negeri Pulau Pinang & Anor* [2002] 4 MLJ 49; [2003] 5 CLJ 181 (HC), *Krishnadas a/l Achutan Nair & Ors v Maniyam a/l Samykano* [1997] 1 MLJ 94; [1997] 1 CLJ 636 (FC) and *Tan Kim Chuan & Anor v Chandu Nair* [1991] 2 MLJ 42; [1991] 1 CLJ 441 and urged the court to adopt a purposive approach of interpretation of the Act. In my view these cases are irrelevant to the issue at hand.

Application dismissed with costs.

Reported by Mashrifah Ravendran